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ARIZONA ATTORNEY GENERAL
March 7, 1960

C. G. Salsbury, M.D., Commissioner
Arizona State Department of Health
Phoenix, Arizona

H.B. DANIELS

I Concur

NEWMAN WHITE

I Concur

LESLIE HARDY

WADE CHURCH

Re: Travel Claims for Sanitarian

Dear Sir:

This is in reply to your communication of February 4, 1960, re the payment by the Auditor's Office of certain travel claims.

These facts have been submitted to us for review and opinion:

The State Department by virtue of A.R.S. § 33-605, is responsible for the State Milk Control program. The Health Department uses local sanitarian engineers to supervise county milk programs. Greenlee County has for a number of years not employed a sanitary engineer. To effectively reduce the cost of supervising the program in Greenlee County, the department has for more than thirteen years used the sanitarian of Graham County. In doing so the department has authorized travel expenses for the agent. These claims are now being questioned by the State Auditor.

The question posed by your letter is: Under such circumstances, as described above, may the State Auditor refuse to pay the travel claims of the sanitarian?

The persons entitled to travel expenses are enumerated under A.R.S. § 38-621. This statute prescribes as follows:

"38-621. Persons eligible to receive travel expenses

The provisions of this article shall apply to every public officer, deputy or employee of the state, or any department, institution or agency thereof, and to a member of any board, commission or other agency of the state when traveling on necessary public business away from his designated post of duty and when issued a proper travel order."

Analyzed, the law says: A person qualifies for travel

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reimbursement when, and only when such person is a public officer such as a deputy or employee of the state, or a deputy or employee of a department or a member of a board or commission or other agency of the state, and when they are

- (A) traveling on needed public business,
- (B) away from his designated post of duty,
- (C) under a properly issued travel order.

There are several issues raised that if answered in the affirmative, entitle the sanitarian to claim his travel.-

(1) Is the subject person a public officer, i.e., "deputy or employee" within the meaning of this statute? (2) When he travels to Greenlee County, is he on necessary public business? (3) Is he "away from his designated post of duty" and was he issued a proper travel order?

We answer question No. 1 affirmatively. This person was appointed to represent the department in a function which the law requires the department of health to perform.

See A.R.S. § 3-605; A.R.S. § 36-136(2)(6)(8); A.R.S. § 36-134. This constitutes the subject sanitarian a state employee within the meaning of § 38-621, supra.

Obviously the travel to Greenlee County for inspecting and supervising milk programs is a necessary public business. The answer to this question is Yes. This poses the perennial issue, what is a public purpose? Our Supreme Court has discussed this problem in several cases. City of Tombstone v. Macia, 30 Ariz. 218; Frohmler v. Board of Regents, 64 Ariz. 362; City of Glendale v. White, 67 Ariz. 231.

In the Macia decision the Court observed, at pages 222, 223:

"'Public Purpose' is a phrase perhaps incapable of definition, and better elucidated by examples."

In a subsequent paragraph the court in positive, clear language said:

"* * * It is clearly within the limits of a governmental or public purpose to protect the public health, and one of the agencies most conducive to a high standard of public health is a pure and abundant water supply."

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Like the Court, we believe pure, good, wholesome milk is "one of the agencies most conducive to a high standard of public health" in the community. We are of the opinion that the subject employee was on necessary public business, and away from his place of duty. Since the orders presented to the Auditor were signed by the proper department head, we deemed that the claim satisfied that part of the statute which requires proper issuance of the order.

For the reasons discussed above, it is the opinion of the Department of Law that the State Auditor should pay the travel claim of the subject sanitarian.

Parenthetically, we are informed that this practice has been employed and acquiesced in by all parties for more than ten years. Our Supreme Court in Bohannon v. Corp. Comm. 82 Ariz. 299, advises that when,

"Uniform acquiescence of meaning if it is not manifestly erroneous, will not be disturbed, at least in cases of doubt * * *"

We do not think there has been anything "manifestly erroneous" in the method in which these claims have been handled. We do not feel that there is any reason to doubt that the sanitarian should receive his travel pay.

On this authority and the others, we conclude that the subject state employee is the person entitled to compensation under A.R.S. § 33-621.

We trust this assists you in resolving your problem. Please advise if we can be of additional assistance.

Very truly yours,

WADE CHURCH
The Attorney General

H. B. DANIELS
Assistant Attorney General

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